



City of Norfolk

Office of the City Manager

C: Dir., City Planning

July 11, 2006

To the Honorable Council
City of Norfolk, Virginia

Re: Special Exception – 5770 Chesapeake
Boulevard

Ladies and Gentlemen:

- I. **Recommended Action:** The Planning Commission recommends denial. The attached ordinance approves the request should it be the desire of the City Council.
- II.
- III. **Overview**

This agenda item is a special exception that would govern operation establishment for the sale of alcoholic beverages for off-premises consumption known as El Boricua International Grocery Store to be located at 5770 Chesapeake Boulevard. The facility has been in operation as a convenience store since May of 2003 at this location. Attached hereto are conditions prescribed to the granting of the special exception.

IV. **Analysis**

A. **General**

The site is a strip commercial center with multiple commercial uses including two beauty salons, a retail service establishment, a car repair facility, and several limousine services. The building on this site was built in the 1970's and is non-conforming regarding setbacks, buffer areas, landscaping and parking. The addition of alcohol sales to the existing convenience store would intensify the use of the site beyond its capacity.

The City Council, in considering these conditions, must also determine that the proposed Special Exception complies with each of the requirements of Section 25-7 of the Zoning Ordinance of the City of Norfolk. The requirements address compatibility with the objectives and policies of The General Plan of Norfolk, assurance against a negative impact on the value of other properties within the neighborhood, traffic congestion, impact on natural resources (water and air quality) and other conditions as noted in the attached ordinance.

R-2

It should be noted that violation of any provision or condition of this ordinance shall be punishable in accordance with the enforcement procedures set forth in Chapter 23 of the Zoning Ordinance of the City of Norfolk, 1992 (as amended) and shall constitute grounds for revocation of this Special Exception.

B. Fiscal
N/A.

C. Environmental
N/A.

D. Community Outreach/Notification
The applicant met with the Norview Civic League. The Civic League supported the application; however, the Ward 5 partnership has requested that this application be denied. The Planning Commission held a public hearing on the matter and heard from citizens, the civic league and the Ward 5 partnership.

V. Board/Commission Action

By a 7 to 0 vote, the City Planning Commission recommends **denial** of the application of Il Boricua International Grocery Store by Andy Lopez. Denial of this request does not prohibit the continuing operation of the convenience store.

Should approval be considered, the special exception should be subject to the additional following conditions:

1. The hours of operation for the sale of alcoholic beverages for off-premises consumption shall be from 8:00 a.m. until 11:30 p.m., seven days per week.
2. No alcoholic beverage having more than 21% alcohol by volume shall be sold.
3. No alcoholic beverage of any kind shall be sold at any facility located on the site other than the supermarket/grocery store building.
4. There shall be no off-premises sales of alcohol.
5. No alcoholic beverage having more than 21% alcohol by volume shall be sold.
6. No single size servings of beer shall be sold.
7. The business authorized by this Special Exception shall be conducted in accordance with the Description of Operations set for in "Exhibit A", attached hereto. The representations made in "Exhibit A" shall be binding upon all owners, operators, and managers who operate and/or manage the premises covered by this Special Exception. Should any owners, operator, or manager

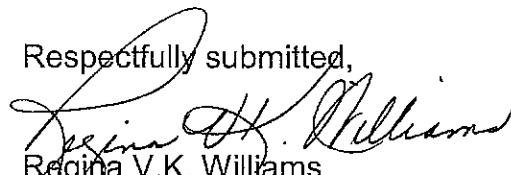
desire to operate the business in a manner different that as presented in "Exhibit A," a new Special Exception must be obtained prior to implementing such change. Where any limitation or representation contained in "Exhibit A" is inconsistent with any condition of this ordinance, the conditions of this ordinance shall govern.

8. Any requirements, limitations or restrictions imposed by the Virginia ABC Commission or by any provision of Virginia Law upon this establishment which are more stringent than the requirements of the Special Exception shall be effective and binding. Any violation of such limitation requirement or restriction imposed by the ABC Commission shall be deemed a violation of this Special Exception. The Special Exception may be revoked for any violation of a general or specific condition, including a condition incorporated by reference and including a condition arising from limitations, requirements of restrictions imposed by the ABC Commission or by State Law.

VI. Conclusion

It is recommended that the City Council deny the request as presented. However, should Council decide to approve the request the attached conditions should be considered.

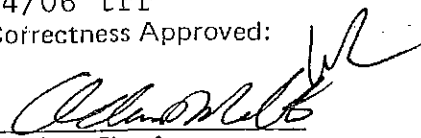
Respectfully submitted,



Regina V.K. Williams
City Manager

6/14/06 trr
Form and Correctness Approved:

Contents Approved:


Office of the City Attorney

NORFOLK, VIRGINIA

By 
DEPT.

ORDINANCE No.

AN ORDINANCE GRANTING A SPECIAL EXCEPTION TO PERMIT
THE SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES
CONSUMPTION ON PROPERTY LOCATED AT 5770 CHESAPEAKE
BOULEVARD.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That a Special Exception is hereby granted to
El Boricua International Grocery Store authorizing the sale of
beer and wine for off-premises consumption on property located
at 5770 Chesapeake Boulevard. The property which is the subject
of this Special Exception is more fully described as follows:

Property located on the southeast corner of Chesapeake
Boulevard and Lenoir Circle, fronting 30 feet, more or
less, along the eastern line of Chesapeake Boulevard
and 96 feet, more or less, along the southern line of
Lenoir Circle; premises numbered 5770 Chesapeake
Boulevard.

Section 2:- That the Special Exception granted hereby shall
be subject to the following conditions:

- (a) The hours of operation for the sale of alcoholic
beverages for off-premises consumption shall be
from 8:00 a.m. until 11:30 p.m., seven days per
week.
- (b) This Special Exception shall automatically expire
upon a change of ownership of the property, a
change in possession, or a change in the
operation or management of the facility.
- (c) The business authorized by this Special Exception
shall be conducted in accordance with the
Description of Operations set forth in "Exhibit
A," attached hereto. The representations made in
"Exhibit A" shall be binding upon all owners,
operators and managers who operate and/or manage

the premises covered by this Special Exception. Should any owner, operator, or manager desire to operate the business in a manner different than as represented in "Exhibit A," a new Special Exception must be obtained prior to implementing such change. Where any limitation or representation contained in "Exhibit A" is inconsistent with any condition of this ordinance, the conditions of this ordinance shall govern.

- (d) Any requirements, limitations, or restrictions imposed by the Virginia ABC Commission or by any provision of Virginia law upon this establishment which are more stringent than the requirements of this Special Exception shall be effective and binding. Any violation of such requirement, limitation, or restriction imposed by the ABC Commission shall be deemed a violation of this Special Exception. This Special Exception may be revoked for any violation of a general or specific condition, including a condition incorporated by reference and including a condition arising from requirements, limitations, or restrictions imposed by the ABC Commission or by Virginia law.
- (e) A copy of this Special Exception ordinance and "Exhibit A" (including the floor plan) shall be available on site at all times for inspection, and a notice indicating that this Special Exception ordinance and all amendments are kept on the premises and are available for review by any member of the general public shall be posted in a visible location. The notice shall also contain information on where and how to report violations of conditions and shall include the address of the zoning administrator.
- (f) No alcoholic beverage having more than 21% alcohol by volume shall be sold.
- (g) No beer shall be sold by the single bottle.

Section 3:- That the City Council hereby makes the following findings of fact:

- (a) That the proposed use will not be contrary to the public interest or be injurious to nearby properties, and that the spirit and intent of the zoning ordinance will be observed;
- (b) That the establishment of an additional adult use in the area will not conflict with any Council adopted objectives, plans or programs for the area;
- (c) That the establishment of an additional adult use will not be contrary or detrimental to any program of neighborhood conservation or renewal in adjacent residential areas; and
- (d) That all applicable regulations of the zoning ordinance and special conditions attached to this special exception will be observed.

Section 4:- That the City Council hereby waives the locational provisions for adult uses as set forth in Section 25-10.1 of the Zoning Ordinance of the City of Norfolk, 1992 (as amended).

Section 5:- That the City Council hereby determines that the Special Exception granted herein complies with each of the requirements of § 25-7 of the Zoning Ordinance of the City of Norfolk, 1992 (as amended), namely that:

- (a) The proposed use and development will be in harmony with the objectives and policies of the adopted General Plan of Norfolk and with the general and specific purposes for which this ordinance was enacted and for which the regulations of the district in question were established;
- (b) The proposed use and development will not substantially diminish or impair the value of the property within the neighborhood in which it is located;
- (c) The proposed use and development will not have an adverse effect upon the character of the area or the public health, safety and general welfare. Conditions may be applied to the proposed use and development, as specified in section 25-8 below,

to mitigate potential adverse impacts;

- (d) The proposed use and development will be constructed, arranged and operated so as not to interfere with the use and development of neighboring property in accordance with the applicable district regulations;
- (e) The proposed use and development will be served adequately by essential public facilities and services such as streets, public utilities, drainage structures, police and fire protection, refuse disposal, parks, libraries, and schools;
- (f) The proposed use and development will not cause undue traffic congestion nor draw significant amounts of traffic through residential streets;
- (g) The proposed use and development will not result in the destruction, loss or damage of natural, scenic or historic features of significant importance;
- (h) The proposed use and development will not cause substantial air, water, soil or noise pollution or other types of pollution which cannot be mitigated;
- (i) The proposed use and development will not cause a negative cumulative effect, when its effect is considered in conjunction with the cumulative effect of various special exception uses of all types on the immediate neighborhood and the effect of the proposed type of special exception use on the city as a whole;
- (j) The proposed use and development complies with all additional standards imposed on it by the particular provisions of the ordinance authorizing such use; and
- (k) No application for a special exception shall be recommended or granted until any and all delinquent real estate taxes owed to the City of Norfolk on the subject property have been paid.

Section 6:- Violation of any provision or condition of this

ordinance shall be punishable in accordance with the enforcement procedures set forth in Chapter 23 of the Zoning Ordinance of the City of Norfolk, 1992 (as amended) and shall constitute grounds for revocation of this Special Exception.

Section 7:- That this ordinance shall be in effect from the date of its adoption.

ATTACHMENT

Exhibit A (1 page)



City of Norfolk

EXHIBIT A Description of Operations Off-Premise Sale Of Alcoholic Beverage

Date of Application: 03/24/06

Name of business: EL BORIKWA INTERNATIONAL GROCERY STORE

Address of business: 5770 CHESAPEAKE BLVD

Name(s) of business owner(s): ANDY OMAR LOPEZ

Name(s) of property owner(s): SAME AS ABOVE

Name(s) of business manager(s)/operator(s): SAME AS ABOVE

Daytime telephone number (): SAME AS ABOVE

1. Type of alcoholic beverage applied for:

Beer Wine Mixed Beverage

2. Alcoholic beverages to be sold:

Room temperature

Refrigerated

3. List the liquid content size of all alcoholic beverages that will be sold at this location (i.e. 6 oz; 12 oz; 32 oz; etc.):

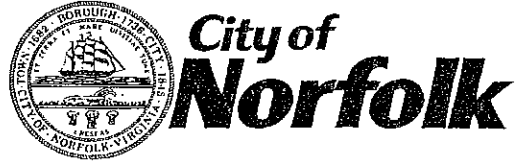
 ounce N/A ounce ounce

 ounce ounce

4. Will alcoholic beverages be sold in single cans/bottles or by carton/case?

SIX PACK / CASE'S

Signature of applicant/owner



Inter Department Correspondence Sheet

TO: City Manager
FROM: City Planning Commission
COPIES TO:
SUBJECT: Application for Adult Use Special Exception (2 P.H. 25 May 2006)

PART 1: APPLICATION DESCRIPTION:

Nature of Application:

Adult Use Special Exception: To operate an establishment for the sale of alcoholic beverages for off-premise consumption.

Location: 5770 Chesapeake Boulevard (Maps 1 and 2).

Applicant: El Boricua International Grocery Store by Andy Lopez

Property Owner: Marshall B. Meredith

Description of proposed use:

The site is located on the east side of Chesapeake Boulevard in a strip retail center. The applicant has been operating a convenience store at this location since May of 2003. He would like to sell alcoholic beverage for off-premises consumption to his patrons.

The proposed hours for the sale of alcoholic beverages for off-premises consumption are from 8:00 a.m. until 11:30 p.m.; seven days a week. No single size servings would be sold.

Description of existing land use pattern:

This site is located on east side of Chesapeake Boulevard on the northeast corner of Chesapeake Boulevard and Lenoir Circle. The site is located within a strip commercial center that is developed with multiple uses including beauty salons, car repair, and several limousine services.

The Norview, Norview Heights and Estabrook residential neighborhoods surround the site to the west, east, north and south.

PART 2: ANALYSIS/EVALUATION:

Prior Zoning History:

- 1.) 2001: A request by Patricia Perera for a special exception to operate an establishment for the sale of alcoholic beverages for off-premises consumption on property located at 5800 Chesapeake Boulevard. Staff and the Planning Commission denied the request and the request was withdrawn.

Neighborhood Impact:

This portion of Chesapeake Boulevard is generally developed with residential uses. The addition of alcoholic beverage sales at this commercial strip would further intensify the site and would have a negative impact on the neighborhood.

General Plan Impact:

The General Plan designates the area as commercial/office. This proposal would be considered to be in conformance with the General Plan.

Zoning Impact:

This application is for a special exception, which acknowledges that while the use is generally permitted in the district, it is of such a character that careful scrutiny is needed to determine if it is appropriate in this specific location and, if so, under what conditions.

The application to operate an establishment for the sale of alcoholic beverages off-premise requires an adult use special exception, to which particular locational standards (described in Subsection 25-10.1) dealing with the concentration of similar facilities and the proximity to residential districts apply. Granting the request could require the waiver of these standards. Two waivers are needed for this application as is illustrated on Map 5.

The waivers may be granted by City Council if all four of the following findings are made:

- 1) that the proposed use will not be contrary to the public interest or be injurious to nearby properties, and that the spirit and intent of the zoning ordinance will be observed;
- 2) that the establishment of an additional adult use in the area will not conflict with any Council adopted objectives, plans or programs for the area;
- 3) that the establishment of an additional adult use will not be contrary or detrimental to any program of neighborhood conservation or renewal in adjacent residential areas; and
- 4) that all applicable regulations of the zoning ordinance and special conditions attached to special exception will be observed.

As shown on Map 1, the site is located in a C-2 (Corridor Commercial) district, which is developed with conforming uses. This use will have to observe the general conditions for special exceptions contained in Section 25-9 of the Zoning Ordinance and the special standards relating to adult uses contained in Subsection 25-10.1.

PART 3: RECOMMENDATION:

The Planning Commission unanimously recommends (by a 7 to 0 vote) that this adult use special exception be denied.

This strip commercial center is developed with multiple commercial uses including 2 beauty salons, a retail service establishment, a car repair facility, and several limousine services. The building on this site was built in the 1970's and is non-conforming regarding setbacks, buffer areas, landscaping and parking. The addition of alcoholic beverages sales to the existing convenience store would intensify the use of the site beyond its capacity.

Denial of this request does not prohibit the continuing operation of the convenience store.

Should approval be considered, the special exception should be subject to the additional following conditions:

- 1) The hours of operation for the sale of alcoholic beverages for off-premises consumption shall be from 8:00 a.m. until 11:30 p.m., seven

days per week.

- 2) No alcoholic beverage having more than 21% alcohol by volume shall be sold.
- 3) No alcoholic beverage of any kind shall be sold at any facility located on the site other than the supermarket/grocery store building.
- 4) This Special Exception shall automatically expire upon a change of ownership of the property, a change in possession, or a change in the operation or management of the facility.
- 5) No single size servings of beer shall be sold.
- 6) The business authorized by this Special Exception shall be conducted in accordance with the Description of Operations set forth in "Exhibit A," attached hereto. The representations made in "Exhibit A" shall be binding upon all owners, operators and managers who operate and/or manage the premises covered by this Special Exception. Should any owner, operator or manager desire to operate the business in a manner different than as represented in "Exhibit A," a new Special Exception must be obtained prior to implementing such change. Where any limitation or representation contained in "Exhibit A" is inconsistent with any condition of this ordinance, the conditions of this ordinance shall govern.
- 7) Any requirements, limitations or restrictions imposed by the Virginia ABC Commission or by any provision of Virginia law upon this establishment which are more stringent than the requirements of this Special Exception shall be effective and binding. Any violation of such limitation requirement or restriction imposed by the ABC Commission shall be deemed a violation of this Special Exception. The Special Exception may be revoked for any violation of a general or specific condition, including a condition incorporated by reference and including a condition arising from limitations, requirements of restrictions imposed by the ABC Commission or by State law.
- 8) The proposed use and development will be in harmony with the objectives and policies of the adopted General Plan of Norfolk and with the general and specific purposes for which this ordinance was enacted and for which the regulations of the district in question were established;
- 9) The proposed use and development will not substantially diminish or

impair the value of the property within the neighborhood in which it is located;

- 10) The proposed use and development will not have an adverse effect upon the character of the area or the public health, safety and general welfare. Conditions may be applied to the proposed use and development, as specified in section 25-8 below, to mitigate potential adverse impacts;
- 11) The proposed use and development will be constructed, arranged and operated so as not to interfere with the use and development of neighboring property in accordance with the applicable district regulations;
- 12) The proposed use and development will be served adequately by essential public facilities and services such as streets, public utilities, drainage structures, police and fire protection, refuse disposal, parks, libraries, and schools;
- 13) The proposed use and development will not cause undue traffic congestion nor draw significant amounts of traffic through residential streets;
- 14) The proposed use and development will not result in the destruction, loss or damage of natural, scenic or historic features of significant importance;
- 15) The proposed use and development will not cause substantial air, water, soil or noise pollution or other types of pollution which cannot be mitigated;
- 16) The proposed use and development will not cause a negative cumulative effect, when its effect is considered in conjunction with the cumulative effect of various special exception uses of all types on the immediate neighborhood and the effect of the proposed type of special exception use on the city as a whole;
- 17) The proposed use and development complies with all additional standards imposed on it by the particular provisions of the ordinance authorizing such use; and
- 18) No application for a special exception shall be recommended or granted until any and all delinquent real estate taxes owed to the City of Norfolk on the subject property have been paid.

- 19) Violation of any provision or condition of this ordinance shall be punishable in accordance with the enforcement procedures set forth in Chapter 23 of the Zoning Ordinance of the City of Norfolk, 1992 (as amended) and shall constitute grounds for revocation of this Special Exception.

MAPS:

1. Location and Zoning
2. Site
3. Site Plan
4. Floor Plan
5. Adult Use Waivers Needed

Property Description:

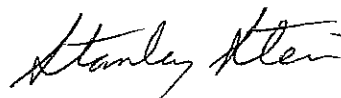
Property located on the southeast corner of Chesapeake Boulevard and Lenoir Circle fronting 30 feet, more or less, along the eastern line of Chesapeake Boulevard and 96 feet, more or less, along the southern line of Lenoir Circle; premises now or formerly numbered 5770 Chesapeake Boulevard.

Proponents:

Andy Lopez
5770 Chesapeake Boulevard
Norfolk, VA 23513

Opponents:

None



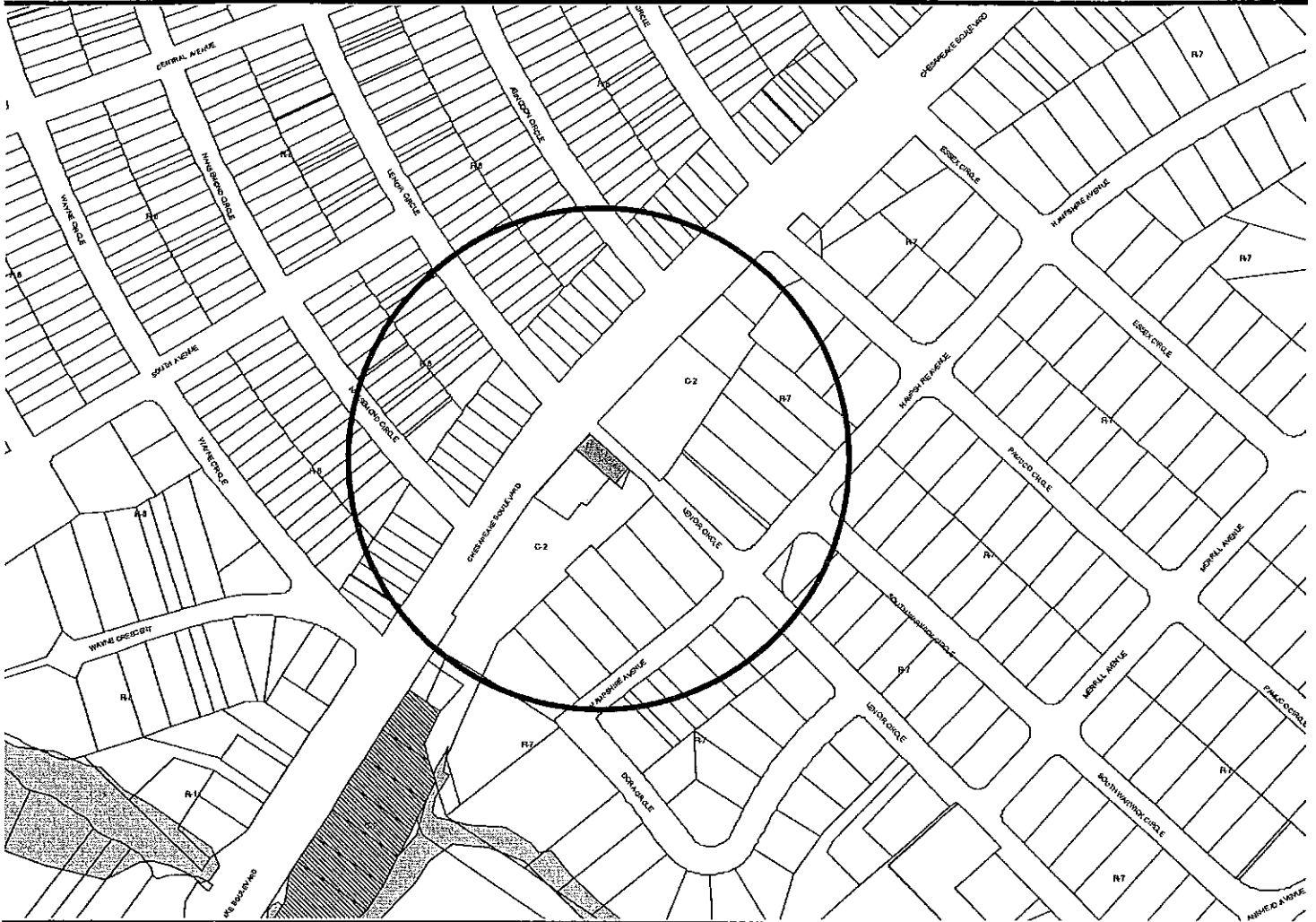
Stanley Stein
Acting Executive Secretary

Attachments

1. LOCATION AND ZONING

PROPOSED ADULT SPECIAL EXCEPTION

EL BORICUA INTERNATIONAL GROCERY STORE
5770 Chesapeake Boulevard



Planning Commission Public Hearing

May 25, 2006

Application 2



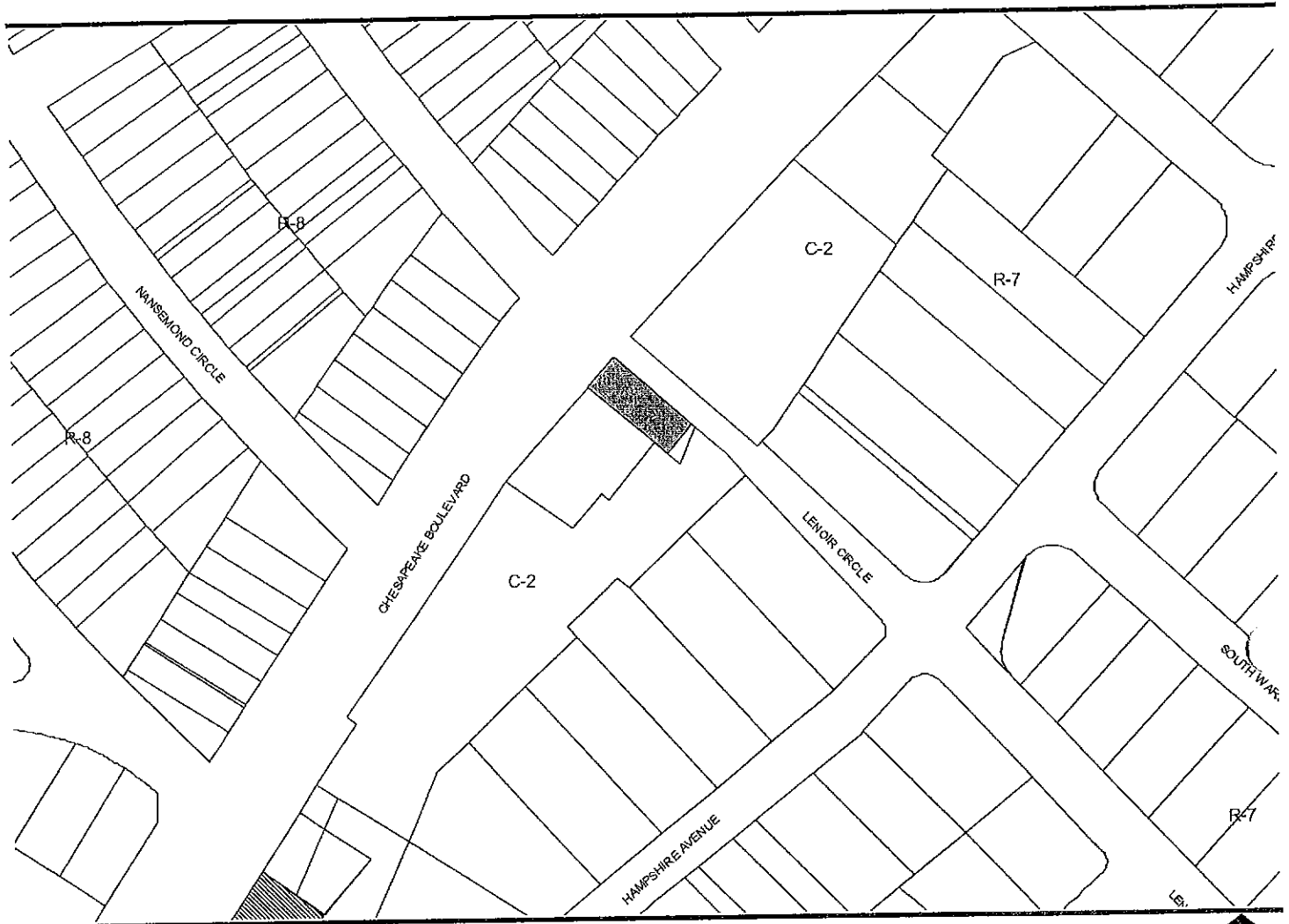
Location



2. SITE

PROPOSED ADULT SPECIAL EXCEPTION


EL BORICUA INTERNATIONAL GROCERY STORE
5770 Chesapeake Boulevard



Planning Commission Public Hearing

May 25, 2006

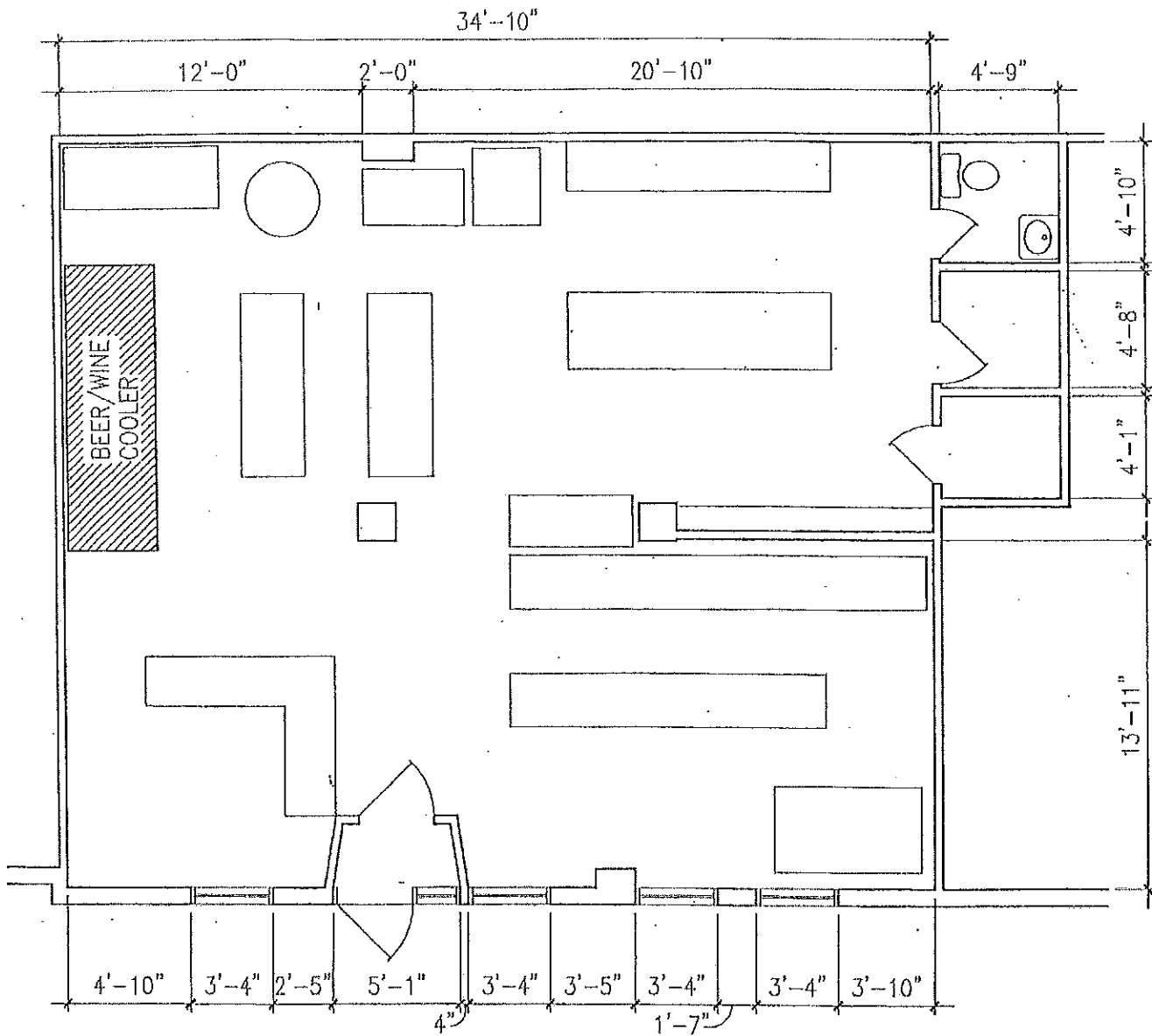
Application 2

 Location

4. FLOOR PLAN

PROPOSED ADULT SPECIAL EXCEPTION

EL BORICUA INTERNATIONAL GROCERY STORE
5770 Chesapeake Boulevard



Planning Commission Public Hearing

May 25, 2006

Application 2

5. ADULT USE WAIVERS NEEDED

PROPOSED ADULT SPECIAL EXCEPTION

EL BORICUA INTERNATIONAL GROCERY STORE
5770 Chesapeake Boulevard



Planning Commission Public Hearing
May 25, 2006 Application 2



1. Other adult uses within 1000 feet

☒ No ☐ Yes

☐ Waiver required (if two or more)

2. Residential zone district boundary

within 500 feet of establishment.

☐ No ☒ Yes (waiver required)

3. Residential zone boundary within 300

feet of the establishments required parking.

☐ No ☒ Yes (waiver required)